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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,299	08/05/2003	Randall T. Webber	111586-099CIP	7960
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PROCOPIO, CORY, HARGREAVES & SAVITCH LLP				
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SUITE 2100				
SAN DIEGO, CA 92101				
EXAMINER				
RICHMAN, GLENN E				
ART UNIT		PAPER NUMBER		
3764				
NOTIFICATION DATE		DELIVERY MODE		
03/19/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com

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Office Action Summary

Application No.

10/634,299

Applicant(s)

WEBBER ET AL.

Examiner

/Glenn Richman/

Art Unit

3764

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29, 32 and 34-41 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10, 14, 17 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 9, 11-13, 15, 16, 18-20, 23, 25, 26, 29, 32 and 34-40 is/are rejected.
- 7) ☒ Claim(s) 3, 6, 8, 21, 22, 27, 28, 38 and 41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-646)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The indicated allowability of the claims is withdrawn in view of the newly discovered reference(s) to Johnson. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 9, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson.

Johnson discloses a main arm 162 having a first end for pivoting on a frame of an exercise machine for pivoting about a first pivot axis fig. 5; a swing arm 160 having a first end and a second end fig. 5; a pivot connection (168, with pin removed) between the swing arm and the main arm which defines a second pivot axis and which allows free pivoting of the swing arm about the second pivot axis within a predetermined angular range fig. 5, the swing arm being freely pivotable about the second pivot axis within the predetermined angular range fig. 5, whereby a user can define the motion of the swing arm fig. 5; and a handle 180 pivoted to the swing arm for pivoting about a third pivot axis, each pivot axis being non-parallel to the other two pivot axes, and at least one pivot axis being non-perpendicular to the other two pivot axes fig. 5,

a main arm 162 having a first pivot connection for connection to a frame of an exercise machine fig. 5, the pivot connection defining a first pivot axis fig. 5; a swing arm 160 pivoted to the main arm for pivoting about a second pivot axis fig. 5; a handle 180 pivoted to the swing arm for pivoting about a third pivot axis fig. 5, each pivot axis being non-parallel to the other two pivot axes fig. 5, and at least one pivot axis being non-perpendicular to the other two pivot axes fig. 5; and the main arm having a first angled bend 164 defining a first portion extending from the first pivot connection to the bend and a second portion extending from the bend to the swing arm pivot axis fig. 5, and the swing arm having a second angled bend 166 defining a third portion extending from the swing arm pivot axis to the second bend and a fourth portion extending from the second bend fig. 5, the pivot connection includes a range limiting device which limits the free rotation of the swing arm about the second pivot axis to the predetermined angular range 61A, the handle comprises a pivot bracket 190 having a pivot shaft rotatably secured to the swing arm for rotation about said third pivot axis, and a grip rotatably mounted on the bracket for rotation about a fourth axis perpendicular to the third pivot axis col. 7, lines 1 – et seq.

As for claim 11, Johnson further discloses a main arm 162 having a first pivot connection for connection to a frame of an exercise machine, the first pivot connection defining a first pivot axis; a swing arm 160,170 pivoted to the main arm for pivoting about a second pivot axis; a handle 180 pivoted to the swing arm for pivoting about a third pivot axis, each pivot axis being non-parallel to the other two pivot axes, and at least one pivot axis being non-perpendicular to the other two pivot axes fig. 5; the

Art Unit: 3764

handle comprising a pivot bracket having a pivot shaft 190 rotatably secured to the swing arm for rotation about said third pivot axis, and a grip rotatably mounted on the bracket for rotation about a fourth axis perpendicular to the third pivot axis 178; and the grip extends transverse to the third pivot axis and is not offset from the handle pivot shaft fig. 5, a pivot sleeve secured to the swing arm, said pivot shaft being rotatably secured in said pivot sleeve, and said pivot sleeve being oriented at a non-perpendicular angle to said swing arm fig. 5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 4, 15, 16, 18-20, 23, 25, 26, 29, 32, 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

Johnson discloses all the limitations of claims 13, 15, 18, 25, 34, 39 as discussed above, except there being a pair of exercise arm assemblies.

It would have been obvious to use a pair of exercise arm assemblies with Johnson, as it is well known in the art to use a pair of exercise arms, for exercising both arms simultaneously.

Johnson discloses each swing arm has an inboard side facing the other swing arm and an outboard side, and each handle is pivoted at the inboard side of the respective swing arm fig. 5, the exercise arm assemblies define a central axis of the

exercise apparatus, each swing arm has an inboard side facing said central axis and an outboard side, and the handle is pivoted at the inboard side of the swing arm fig. 5, the inner position comprises a rest position fig. 5, the swing arms are angled outwardly in said rest position fig. 5, each handle comprises a handle bracket having a pivot shaft rotatably secured to the swing arm for rotation about said third pivot axis, and a grip rotatably mounted on the bracket for rotation about a fourth axis perpendicular to the third pivot axis fig. 5, each pivot axis is non-perpendicular to the other two pivot axes, fig. 5, the first locations of the main arms are secured together for securing at a selected location on an exercise machine frame by a single pivot connection fig. 5.

Allowable Subject Matter

Claims 3, 6, 8, 21, 22, 27, 28, 38, 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764